

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GARY MOTON,

Plaintiff,
-against-

CAPTAIN WILLIAMS,

Defendant.

USDC SDNY
DOCUMENT
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ORDER

15 Civ. 6485 (GBD) (JLC)

GEORGE B. DANIELS, United States District Judge:

Plaintiff Gary Moton, *pro se*, brings this action against Defendants City of New York, Captain Odetta Williams, the Warden of the Anna M. Kross Center (“AMKC”) on Rikers Island, and a “Ms. Dunbar,” alleging that his constitutional rights were violated while he was detained at AMKC. (See Am. Compl., ECF No. 27.) The matter was referred to Magistrate Judge James L. Cott for general pretrial supervision, as well as to report and recommend on any dispositive motions. (See Order of Reference, ECF No. 8.) This Court previously adopted in full Magistrate Judge Cott’s Report and Recommendation dated December 8, 2016, (ECF No. 37), and dismissed Plaintiff’s claims against the City of New York, the Warden, and Dunbar for failure to state a claim upon which relief could be granted. (See Memorandum Decision and Order dated June 15, 2017, ECF No. 38.)

On March 19, 2018, Williams moved to dismiss this action for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (See Mot. to Dismiss, ECF No. 54.) Before this Court is Magistrate Judge Cott’s May 16, 2018 Report and Recommendation, (the “Report,” ECF No. 58), recommending that Williams’s unopposed motion to dismiss be granted.¹ (*Id.* at 1.) In his

¹ The relevant procedural and factual background is set forth in greater detail in the Report and is incorporated herein.

Report, Magistrate Judge Cott advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections on appeal. (*Id.* at 11.) No objections have been filed. Having reviewed the Report for clear error and finding none, this Court adopts the Report in full.

Magistrate Judge Cott advised Plaintiff a number of times, including in his prior discovery orders, that Plaintiff's failure to participate in the discovery process could result in the dismissal of his case for failure to prosecute. (*Id.* at 3–4.) Yet, as the Report notes, Plaintiff has failed to respond to Defendant's discovery requests or otherwise comply with discovery deadlines despite receiving multiple extensions of time in which to do so. (*Id.* at 4.) Plaintiff also failed to appear for his scheduled deposition on at least three separate occasions. (*Id.*) Plaintiff has not opposed Williams's motion to dismiss, nor has he had any contact with this Court or Magistrate Judge Cott since August 23, 2017. (*See id.* at 3–4.) As the Report correctly found, dismissal without prejudice for failure to prosecute is therefore appropriate. (*See id.* at 6–10.)

CONCLUSION

Magistrate Judge Cott's Report is ADOPTED. Defendant's motion to dismiss, (ECF No. 54), is GRANTED. The Clerk of Court is directed to close the motion, and this case, accordingly.

This Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. Therefore, *in forma pauperis* status is DENIED for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

Dated: New York, New York
July 11, 2018

SO ORDERED.


GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE